

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

ANTHONY WESTBROOK

PLAINTIFF

v.

NO. 4:13-CV-0415 JMM

DEPUTY CALVIN REED;
SHERIFF BRUCE PENNINGTON;
JOHN and JANE DOES I-V and
COUNTY OF SALINE

DEFENDANTS

**PLAINTIFF'S RESPONSE TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Comes now the plaintiff, Anthony Westbrook, by and through his attorney, James F. Swindoll and the Law Offices of James F. Swindoll, and for plaintiff's response to the Motion for Summary Judgment filed by the Defendants, Deputy Calvin, Sheriff Bruce Pennington, John and Jane Does I-V, and the County of Saline, alleges and states as follows:

1. Summary judgment is not proper as there are genuine issues of material fact as the issues alleged in this cause of action;
2. Genuine issues of material fact exist as to the following:
 - a. Whether the force used by Deputy Reed against Anthony Westbrook was excessive, punitive, and amounted to a

violation of his civil rights guaranteed under the fourteenth amendment and 42 U.S. §1983;

b. Whether the Defendant's had a duty to intervene when Deputy Reed exercised unconstitutional force against Anthony Reed.

3. Qualified Immunity does not apply because the conduct of the defendants knowingly violated the plaintiff's clearly established rights under the fourteenth amendment and §1983.

4. The statute of limitations did not toll prior to the filing of this cause of action as the statute of limitations is three years.

5. Pursuant to local rule 56.1 response to defendants' statement of undisputed facts which includes a statement of material facts still in dispute is attached.

6. Attached hereto and incorporated by reference are the following:

- a. Exhibit "1" – Excerpts from the Deposition of Anthony Westbrook;
- b. Exhibit "2" – Excerpts from the Deposition of Calvin Reed;
- c. Exhibit "3" – Video of incident provided by Defendant;
- d. Exhibit "4" – Original Complaint;
- e. Exhibit "5" – Amended Complaint.

7. A brief in support is filed with this motion and incorporated by reference herein.

WHEREFORE, the plaintiff, Anthony Westbrook, respectfully requests that this Honorable Court deny the defendants' motion for summary judgment, and for any and all other just and proper relief for which plaintiff may be entitled.

Respectfully submitted,

/s/ **James F. Swindoll**
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CERTIFICATE OF SERVICE

I hereby certify that on _____, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which shall send notification of such filing to the following:

Mr. George D. Ellis
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